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BEFORE THE
ILLINOIS COMMERCE COMMISSION

IN THE MATTER OF:)
)
SHAWN J. O'FARRELL,)
KAZMIER TOOLING, INC.,)
)
Complainant,) No. 11-0589
vs.)
)
COMMONWEALTH EDISON COMPANY ,)
)
Respondent.)
Complaint as to)
billing/charges in Chicago,)
Illinois)

Chicago, Illinois
November 10, 2011

Met, pursuant to notice, at 11:00 a.m.

BEFORE:

MR. JOHN RILEY, Administrative Law Judge

1 APPEARANCES:

2

MR. SHAWN J. O'FARRELL
3 6001 South Oak Park Avenue
Chicago, Illinois
4 for Complainant pro se;

5 LAW OFFICES OF MARK L. GOLDSTEIN, by
MR. MARK L. GOLDSTEIN
6 3019 Province Circle
Mundelein, Illinois 60060
7 for Respondent.

8

9

10 SULLIVAN REPORTING COMPANY, by
Ann M. Rogers, CSR
11 License No. 084-003934

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I N D E X

<u>Witnesses:</u>	<u>Direct</u>	<u>Cross</u>	<u>Re-direct</u>	<u>Re-cross</u>	<u>By Examiner</u>
Mr. William Mueller	53	61	80	82, 100	85
Mr. Shawn O'Farrell					86
Mr. Miguel Mastache	55	96		97	

E X H I B I T S

<u>Number</u>	<u>For Identification</u>	<u>In Evidence</u>
Complainant's 1	129	129
Respondent's	38	130

1 (Whereupon, ComEd Exhibit
2 Nos. 1-4 were marked for
3 identification.)

4 JUDGE RILEY: Pursuant to the direction of the
5 Illinois Commerce Commission I call Docket 11-0589.
6 This is a complaint by Shawn J. O'Farrell and Kazmier
7 Tooling, Inc. vs. Commonwealth Edison Company as to
8 billing and charges in Chicago, Illinois.

9 Mr. O'Farrell, you are still
10 proceeding without counsel at this point; is that
11 correct?

12 MR. O'FARRELL: I'm --

13 JUDGE RILEY: You're still proceeding without
14 counsel at this point; is that right?

15 MR. O'FARRELL: Right. I couldn't get a lawyer
16 to represent me.

17 JUDGE RILEY: All right. Mr. Goldstein, are
18 you here on behalf of Commonwealth Edison?

19 MR. GOLDSTEIN: That's correct, Judge.

20 JUDGE RILEY: Please enter an appearance.

21 MR. GOLDSTEIN: For Commonwealth Edison Company
22 Mark L. Goldstein, 3019 Province Circle, Mundelein,

1 Illinois 60060. My telephone number is
2 (847) 949-1340. I have with me today Monica Merino
3 of ComEd as well as two witnesses, William Mueller
4 and Miguel Mastache.

5 JUDGE RILEY: Thank you.

6 Mr. O'Farrell, your mailing address is
7 6001 South Oak Park Avenue in Chicago; is that
8 correct.

9 MR. O'FARRELL: Yes, sir.

10 JUDGE RILEY: And your business telephone
11 number is (773) 586-0300?

12 MR. O'FARRELL: Yes, sir.

13 JUDGE RILEY: I'm going to begin with you,
14 Mr. O'Farrell, inasmuch as you have brought the
15 complaint.

16 Would you, in a narrative style,
17 please inform the Court or this forum as to what it
18 is you're complaining about and what action by
19 Commonwealth Edison caused you to file this
20 complaint.

21 MR. O'FARRELL: They back-billed me for two
22 years on a charge of excess equipment, I guess. I'm

1 not sure because of the draft, it mentions five or
2 six, they have it circled, but I think it's excess
3 equipment that they had installed in the alley.

4 JUDGE RILEY: Can I interrupt you one second.

5 (Witness sworn.)

6 JUDGE RILEY: Please proceed. I had to
7 administer the oath, please proceed.

8 MR. O'FARRELL: All right. And at that time I
9 filed a complaint.

10 We tried -- first, we have to decipher
11 because we do now have a new server -- or seller of
12 electricity to us. They're not -- we have Edison as
13 the provider and there is another service called
14 MC Squared that sells us the electricity. So we had
15 a cryptic message from them stating that we had a
16 late charge -- or not a late charge, but a back-pay
17 for two years on a bill, and that from now on we were
18 going to be charged a rental fee on the transformers
19 in the alley that provides my business with the
20 electricity I need to do business.

21 JUDGE RILEY: Now, why were the transformers
22 installed in the alley?

1 MR. O'FARRELL: Commonwealth Edison chose to do
2 that.

3 JUDGE RILEY: Do you have any idea why they
4 chose to do that?

5 MR. O'FARRELL: I requested the service.

6 JUDGE RILEY: And for what reason?

7 MR. O'FARRELL: So I could run my business.

8 JUDGE RILEY: You needed additional electricity
9 to operate your business; is that fair?

10 MR. O'FARRELL: I needed that electricity to
11 run my business. I couldn't actually run my business
12 without it.

13 JUDGE RILEY: And is this the business at
14 6001 South Oak Park Avenue?

15 MR. O'FARRELL: That's one of the addresses,
16 yes.

17 JUDGE RILEY: And that's Kazmier Tooling?

18 MR. O'FARRELL: Yes.

19 JUDGE RILEY: Who is this other entity that
20 you've been dealing with?

21 MR. O'FARRELL: Pardon me?

22 JUDGE RILEY: Who is this other entity that you

1 say you've been getting power from?

2 MR. O'FARRELL: I wasn't getting power from any
3 other entity.

4 JUDGE RILEY: I thought you just mentioned that
5 you did.

6 So you get billed directly by
7 Commonwealth Edison; is that correct?

8 MR. O'FARRELL: No, no. By MC Squared who is
9 the biller.

10 What happened is that your -- Illinois
11 Commerce Commission about five, six, seven years ago
12 decided that Commonwealth Edison should open up their
13 doors and let other businesses come in and sell their
14 power, correct?

15 JUDGE RILEY: All right.

16 MR. O'FARRELL: And that's what happened. So
17 they sell it to us I think at a discount cheaper than
18 Commonwealth Edison and that's why we went to them.

19 JUDGE RILEY: Who -- okay. What I'm not
20 following is what is your relationship? If you're no
21 longer getting power from Commonwealth Edison --

22 MR. O'FARRELL: I'm buying power from

1 MC Squared who buys it from Commonwealth Edison.

2 Do you think that MC Squared should be
3 here, too?

4 JUDGE RILEY: I don't know. I don't know. But
5 you --

6 MR. O'FARRELL: That's who paid them.

7 JUDGE RILEY: You got the bill from
8 Commonwealth Edison for \$2,000.

9 MR. O'FARRELL: No, I got the bill from
10 MC Squared.

11 JUDGE RILEY: Do you have a copy of that bill?

12 MR. O'FARRELL: I do.

13 JUDGE RILEY: Show it to me.

14 MR. O'FARRELL: I have to dig out the original.
15 Here's a copy. I brought some other bills that were
16 just Edison's portion, but I do have that bill
17 because I wanted an explanation by Edison of what the
18 bill pertains to so we can get this resolved.

19 This is the original bill that was
20 sent to us for April of this year with Commonwealth
21 Edison's portion and this is what we received.

22 JUDGE RILEY: This is a bill directly from

1 Commonwealth Edison to Kazmier Tooling for \$2,081.28.

2 MR. O'FARRELL: That didn't come directly to
3 me, it goes through MC Squared. They know that.

4 JUDGE RILEY: But your account -- but according
5 to this, the account is not with MC Squared, the
6 account is with -- Kazmier Tooling's account is with
7 Commonwealth Edison, that's what it says here.

8 MR. O'FARRELL: There is something confusing,
9 then because I'm billed by MC Squared. MC Squared
10 has paid Commonwealth Edison, all right, for all the
11 fees. Now, they're back-charging me and they realize
12 what's going on. They're not charging me late fees
13 anymore for the -- because I haven't paid them.

14 JUDGE RILEY: It says Commonwealth Edison and
15 Kazmier Tooling. Kazmier Tooling is the account
16 holder and there is the sum that was directly billed
17 to you.

18 MR. O'FARRELL: This is who I pay.

19 JUDGE RILEY: Mr. Goldstein, can you shed any
20 light on this.

21 MR. GOLDSTEIN: Yeah, Judge, if you would allow
22 me.

1 MC Squared is the supplier of the
2 energy to Kazmier Tooling. The delivery system, in
3 order to get the energy to Mr. O'Farrell's place of
4 business is provided by ComEd, they have their wires,
5 the poles and so on and so forth to deliver the
6 energy.

7 JUDGE RILEY: When Mr. O'Farrell received a
8 bill for \$2,081 in April did that come from
9 MC Squared or did it come from Commonwealth Edison?

10 MR. GOLDSTEIN: I believe it was ComEd.

11 JUDGE RILEY: I'm sorry?

12 MR. GOLDSTEIN: I believe it was ComEd.

13 MR. O'FARRELL: That's not true. That's not
14 true.

15 Actually, ask him if that bill was
16 paid. We didn't pay it, but MC Squared paid it.

17 MR. GOLDSTEIN: The bill was paid.

18 MR. O'FARRELL: By MC Squared, not us. I owe
19 MC Squared that bill. They bill MC Squared, they do
20 not bill me.

21 JUDGE RILEY: Well, if Commonwealth Edison was
22 paid, then why did you file a complaint against them?

1 MR. O'FARRELL: Because MC Squared paid them,
2 not me. I am being billed by MC Squared for that
3 money.

4 MR. GOLDSTEIN: Judge, we have a witness who
5 probably can describe this better if you would allow
6 us, when the witness comes on the stand, to do this.
7 Maybe that would clear everything up for you.

8 JUDGE RILEY: Very possibly. Then we'll wait
9 until that point. Well, let me just ask a few more
10 questions of Mr. O'Farrell.

11 With regard to the -- well, do you
12 know why you were billed the extra, that \$2,000?

13 MR. O'FARRELL: It took me until June to figure
14 that out, yeah.

15 JUDGE RILEY: Please explain.

16 MR. O'FARRELL: Well, I didn't -- we tried to
17 call Commonwealth Edison and it's not very clear,
18 okay. So we had to go through MC Squared, we tried
19 to get a confirmation or an explanation through
20 Commonwealth Edison and they had a hard time getting
21 it and it took until -- I think if I have -- they
22 have two dates of letters that they sent to my

1 provider in May, the 25th and May 24th, which I have
2 copies of that explained why we were given it, but
3 that was not until May and that's upon our request.

4 JUDGE RILEY: What is the explanation is what I
5 want to know.

6 MR. O'FARRELL: They're claiming that I have
7 excess equipment in the alley to provide me with my
8 service, the transformer block that's in the alley is
9 in excess of what I need for my business to run and
10 they want to back-rent me for two years for the
11 transformers and then they want to charge me a
12 monthly fee after that.

13 JUDGE RILEY: So they have told you that they
14 are billing you for rental --

15 MR. O'FARRELL: Right.

16 JUDGE RILEY: -- of the transformer that's in
17 the alley that provides the addition power to your
18 business.

19 MR. O'FARRELL: Which was installed back in
20 1993 with no rental fee, no charge. I mean, there
21 was a charge to me, it took \$2,900 that I had to pay
22 upfront to Edison, which they have a copy, but it's

1 not in my name, it's in another individual's name.

2 JUDGE RILEY: Other than the bill, do you have
3 any other notice from Commonwealth Edison that you
4 are being charged?

5 MR. O'FARRELL: Before that?

6 JUDGE RILEY: At any time that you were being
7 charged rent.

8 MR. O'FARRELL: We get our first notice -- I
9 got my first notice in May.

10 JUDGE RILEY: That's May of this year?

11 MR. O'FARRELL: Yes.

12 JUDGE RILEY: Do you have that?

13 MR. O'FARRELL: I have notices where they sent
14 MC Squared, but nothing that they sent me. These
15 are -- let me go back and get them all.

16 It's all basically the same thing of
17 when they're dated and when they were sent is another
18 story. And I have received copies from Monica as of
19 yesterday notifying me that -- they said they sent it
20 to me, but it was sent to my provider and it's all
21 the same thing.

22 JUDGE RILEY: Are you saying MC Squared never

1 notified you?

2 MR. O'FARRELL: Pardon me?

3 JUDGE RILEY: MC Squared never notified you?

4 MR. O'FARRELL: We notified MC Squared.

5 All MC Squared said is they sent us a bill with all

6 the excess charges on it in March, you know, for

7 April's bill and at that time the alarm bell went off

8 and we contacted MC Squared. We tried to contact

9 Edison, but since we no longer have the service with

10 Edison we had to go through MC Squared, so

11 MC Squared has got to go through them. See, there's

12 a buffer zone, you know.

13 JUDGE RILEY: So Commonwealth Edison billed

14 MC Squared.

15 MR. O'FARRELL: Right.

16 JUDGE RILEY: And MC Squared passed that cost

17 along to you for \$2,081.

18 MR. O'FARRELL: So now I owe it to MC Squared.

19 MC Squared paid them without an explanation, for what

20 reason maybe that's in their contract they have to do

21 that, I don't know. It's all the same letter, if I

22 run across another one, I'll let you know. Here's an

1 original. (Tendering.) I have our messages through
2 MC Squared to us trying to resolve this dated in May.

3 JUDGE RILEY: You have three different notices
4 here May 12, May 25 and March 24, 2011 all to care of
5 MC Squared Energy.

6 MR. O'FARRELL: Yeah, nothing to me.

7 JUDGE RILEY: But why, then, do you have a bill
8 from Commonwealth Edison directly to Kazmier Tooling?

9 MR. O'FARRELL: I'm not in charge of how
10 Commonwealth Edison bills MC Squared, all right,
11 because that's what's going on. I don't see that.

12 JUDGE RILEY: My point, Mr. O'Farrell, is that
13 they didn't bill MC Squared, they sent the bill
14 directly to you.

15 MR. O'FARRELL: No, they didn't. I get a
16 bill -- what happened, Sir, is they send it to
17 MC Squared, MC Squared pays it and then sends me a
18 copy of it and bills me on top of it.

19 JUDGE RILEY: Show me the bill again.

20 MR. O'FARRELL: Did you give it back to me?

21 JUDGE RILEY: Yes, I did.

22 MR. GOLDSTEIN: Judge, it might be helpful if

1 we handed up the bill to you.

2 JUDGE RILEY: Let the record reflect that I've
3 been handed a copy of a bill, the issue date is
4 March 28, 2011.

5 Let me see yours.

6 MR. O'FARRELL: (Tendering.) This is what I
7 have with me.

8 JUDGE RILEY: The one thing that was missing
9 from the copy that you had is the address down at the
10 bottom that says that Kazmier Tooling is served care
11 of MC Squared Energy, but the account number is in
12 the name of Kazmier Tooling and the service address
13 of 6001 South Oak Park Avenue in Chicago.

14 JUDGE RILEY: Let's go off the record and take
15 a brief recess. I'll be back.

16 (Whereupon, a recess was taken.)

17 JUDGE RILEY: Mr. O'Farrell, my question is to
18 whom are you obligated to pay that \$2,086? According
19 to your understanding, who do you have to pay that
20 to?

21 MR. O'FARRELL: MC Squared now.

22 JUDGE RILEY: Then why did you file the

1 complaint again Commonwealth Edison?

2 MR. O'FARRELL: Because Commonwealth Edison

3 billed MC Squared who bills me. And I told

4 MC Squared that I refuse to pay that portion of the

5 bill, but they said it's too late, we paid that. And

6 then I said that I will -- from now on I will pay the

7 charge, contest it until this is resolved and I said

8 I filed a complaint and they said, Well, continue

9 with that and we'll see what happens now.

10 JUDGE RILEY: Has MC Squared told you that you

11 are obligated to pay them the \$2,000?

12 MR. O'FARRELL: No. They said, Resolve this

13 situation, then at that time they will see whether I

14 am obligated to pay them or not.

15 JUDGE RILEY: All right. What I'm going to do

16 is hold your case in abeyance for the time being and

17 I'll recall you later.

18 Mr. Goldstein, I want to turn to you.

19 Do you have a witness that can clear this up?

20 MR. GOLDSTEIN: Yes, I do.

21 JUDGE RILEY: Can you please call that witness.

22 MR. GOLDSTEIN: I'd like to call

1 William Mueller.

2 (Witness sworn.)

3 WILLIAM M. MUELLER,

4 called as a witness herein, having been first duly

5 sworn, was examined and testified as follows:

6 DIRECT EXAMINATION

7 BY

8 MR. GOLDSTEIN:

9 Q Mr. Mueller, please state your name and
10 spell your name for the record.

11 A My name is William M. Mueller,
12 W-i-l-l-i-a-m, M-u-e-l-l-e-r.

13 Q By whom are you employed and in what
14 capacity?

15 A I'm employed by ComEd and I'm currently a
16 principal rate administrator in the Retail Rates
17 Department.

18 Q And you've heard the testimony thus far
19 this morning that Mr. O'Farrell has given; have you
20 not?

21 A Yes.

22 Q Let me show you a ComEd bill with an issue

1 date of March 28, 2011.

2 And could you first explain the
3 delivery and supply relationship that is indicated on
4 that bill?

5 A Yes. Kazmier Tooling receives their energy
6 supply from MC Squared and they are considered to be
7 a retail electric supplier. When a customer takes
8 their energy supply from a supplier other than
9 ComEd, they also have the option of receiving a
10 single bill which has the combination of the energy
11 supply charges and the delivery charges from ComEd.

12 When they choose to take a single bill
13 under a single bill option, they will get one bill
14 through their supplier, which is MC Squared, which
15 has the combination of the energy supply charges and
16 the delivery charges of ComEd. So all the bills that
17 ComEd would issue for delivery would go to
18 MC Squared and then from MC Squared to the customer.

19 JUDGE RILEY: So MC Squared bills the customer
20 for the amount?

21 THE WITNESS: Correct.

22 JUDGE RILEY: And then MC Squared returns that

1 money to Commonwealth Edison; is that correct?

2 THE WITNESS: Right.

3 JUDGE RILEY: Is it your understanding then
4 that Mr. O'Farrell's complaint should be against
5 MC Squared?

6 MR. GOLDSTEIN: I guess that calls for a legal
7 conclusion, Judge.

8 JUDGE RILEY: Well, here's the problem,
9 Mr. Goldstein. He's objecting to the rental for the
10 transformers that were installed by
11 Commonwealth Edison back in 1991.

12 MR. O'FARRELL: 1993.

13 MR. GOLDSTEIN: Those charges for the rental
14 are charges of Commonwealth Edison Company. And so I
15 don't know how else to state it other than that.
16 Those are ComEd charges that Mr. O'Farrell is
17 objecting to. He's not objecting to the energy
18 charges that have been charged by MC Squared, he's
19 objecting to the rental charges which are part of the
20 delivery charges that ComEd bills.

21 JUDGE RILEY: Right. It's a ComEd charge that
22 he's objecting to. So ComEd is properly here then?

1 MR. GOLDSTEIN: I would say so.

2 JUDGE RILEY: Thank you, Mr. Mueller.

3 Mr. O'Farrell, did you have any
4 questions for Mr. Mueller?

5 MR. GOLDSTEIN: I have a lot more to say with
6 Mr. Mueller if you'd like me to proceed.

7 JUDGE RILEY: Proceed.

8 BY MR. GOLDSTEIN:

9 Q Could you explain, Mr. Mueller, what the
10 purpose of your testimony is today?

11 A Yes, I'm here to describe ComEd's tariff
12 provisions and the Commission's rules pertaining to
13 the practice of back-billing for up to two years in
14 the case of non-residential customers for unbilled
15 non-standard equipment and to bill the customer
16 moving forward for the non-standard equipment and any
17 charges to the customer for the cost of removal of
18 non-standard equipment if the customer chooses.

19 Q What is meant by the term "standard
20 service" and "standard equipment facilities"?

21 A Standard service provided by ComEd is
22 service sufficient to meet the customer's normal

1 maximum kilowatt demand load occurring during peak
2 period hours at a single point at a minimum of
3 85 percent power factor. And the equipment and
4 facilities used to provide standard service is called
5 standard equipment or facilities.

6 Q How are the costs recovered from standard
7 equipment facilities?

8 A ComEd recovers the cost of standard
9 equipment or facilities in the monthly customer bills
10 charged under the applicable rates.

11 Q And could you now describe what is meant by
12 non-standard equipment facilities?

13 A Non-standard equipment facilities is the
14 equipment facilities in place requested or required
15 by the customer that is in excess of standard
16 equipment or facilities and in ComEd's
17 Tariff Rider NS, non-standard services and facilities
18 on Sheet 277 it states, if larger, more or different
19 services are required or requested by the retail
20 customer, ComEd is allowed to recover from the retail
21 customer the cost of furnishing, installing, owning,
22 operating, replacing and maintaining such services or

1 facilities. Such larger, more or different services
2 or facilities are designated in this rider as
3 non-standard services and facilities.

4 Q And what you're referring to, which
5 Illinois Commerce Commission No. 10 original sheet
6 No. 277 has been marked as ComEd Exhibit 1; is that
7 correct?

8 A Yes.

9 Q And how are costs for non-standard
10 equipment recovered?

11 A The cost of non-standard equipment such as
12 transformers and protective equipment like fuses,
13 cutouts and arresters are recovered through monthly
14 rentals applied to the customer's monthly bill as
15 allowed under Rider NS. The rental amount charged is
16 the difference between the rental amount of standard
17 equipment and the actual equipment in place requested
18 or required by the customer.

19 Q How does that apply in this case?

20 A The customer, Kazmier Tooling, is served by
21 more and larger transformers than those needed to
22 provide standard electric service.

1 Q And could you please describe the
2 Commission's rule that pertains to ComEd's practice
3 to back-bill for up to two years in the case of
4 nonresidential customers for unbilled non-standard
5 equipment.

6 A 83 Illinois Administrative Code Part 280
7 Section 100 allows that a utility can back-bill for
8 up to two years in the case of nonresidential
9 customers. There is nothing if the Public Utility
10 Act that would limit the enforcement of this rule.
11 This provision also allows a customer to enter into a
12 finance-free payment plan equal to the length of time
13 the customer was back-billed.

14 Q We have marked 83 Illinois Administrative
15 Code 288.100 as ComEd Exhibit No. 2; is that correct?

16 A Yes.

17 Q Let's now discuss ComEd's tariff provisions
18 relating to charging the customer for the cost to
19 remove non-standard equipment if the customer chooses
20 this option.

21 Would you describe that?

22 A Yes, Rider NS, non-standard services and

1 facilities Sheet 277 states in part, If a retail
2 customer requests or requires the removal of company
3 facilities and such removal is reasonably and
4 technically feasible, has no significant adverse
5 impact on the company system with respect to
6 reliability or efficiency such removal is performed
7 by the company provided the company is allowed to
8 recover the cost of removing such facilities from
9 such retail customer, including the cost consequences
10 of any applicable federal or state income tax
11 liability.

12 Q And do you understand the policy behind
13 placing this cost on Kazmier Tooling in the tariff?

14 A Yes, as a general rule of tariff
15 construction utilities match costs with costs
16 causers. Many of the tariff sections contain
17 provisions with similar allocation and cost. Here,
18 the customer may choose to modify his existing
19 facilities which will result in a cost imposed on
20 ComEd, it is more appropriate for the customer to
21 bear this cost for changing the facilities than
22 requiring other rate payers to bear that cost.

1 Q Do you have anything else that you wish to
2 provide for the record as part of your testimony?

3 A No, I do not.

4 MR. GOLDSTEIN: I have nothing else of the
5 witness, Judge. I would move into evidence ComEd
6 Exhibits 1 and 2?

7 JUDGE RILEY: 1 and 2?

8 MR. GOLDSTEIN: Yes.

9 JUDGE RILEY: Okay. I'm going to hold a ruling
10 on that in abeyance for the time being.

11 Mr. O'Farrell, do you have any
12 questions for Mr. Mueller with regard to the
13 testimony he testified to.

14 MR. O'FARRELL: Yes.

15 CROSS EXAMINATION

16 BY

17 MR. O'FARRELL:

18 Q You're reading off documents that are dated
19 January 15, 2009; is that correct?

20 A Rider NS.

21 Q All right. Now, like I said, these
22 transformers were installed back in '93. All right.

1 Now, it seems to me that --

2 JUDGE RILEY: Are you addressing a question to
3 Mr. Mueller?

4 MR. O'FARRELL: Yes.

5 JUDGE RILEY: Okay.

6 BY MR. O'FARRELL:

7 Q Now, the cost of these transformers are
8 '93's costs. Is the rental fees based on the
9 installation in '93 or installation as if it was in
10 '09?

11 A The rentals are based on the rental amounts
12 that were in effect in 1993.

13 Q All right. Then we have the -- they sent
14 me this document, Monica did, that states the rent at
15 that time was \$17.35.

16 JUDGE RILEY: A month? A day?

17 MR. O'FARRELL: A month?

18 JUDGE RILEY: Again, do you have a question for
19 Mr. Mueller?

20 MR. O'FARRELL: That was it.

21 BY MR. O'FARRELL:

22 Q Did you see this document?

1 A Yes, I did.

2 Q All right. Is that true?

3 A Yes.

4 Q All right. Then why would it 17 --

5 18 years later go up to \$84.35?

6 A Back in 1993 when you requested your second

7 point of service and ComEd installed the 3-167 kVA

8 transformer bank at that time based on information

9 provided your load was 430 kilowatts, estimated to be

10 430 kilowatts --

11 Q Not off that bank.

12 JUDGE RILEY: Hold on. Let him finish the

13 answer, please.

14 THE WITNESS: Total load, meaning the total at

15 the new point of service and your existing point of

16 service.

17 And so at that point in time because

18 you had two transformations ComEd -- and you're

19 allowed to have a standard transformation -- at that

20 time because based on your total load the standard

21 transformation was determined to be 3-167 kVA

22 transformers.

1 BY MR. O'FARRELL:

2 Q With maximum capability?

3 A Just let me finish here.

4 So in the rental amount in the 1993
5 service request document you had a rental amount that
6 was based on the two transformers that were in place
7 and less the rental amount of the standard
8 transformer, which was just the 3-167 kVA
9 transformers.

10 Today your load is not 430 kilowatts,
11 it's significantly less, it's a little over
12 100 kilowatts. So the standard transformer that's
13 needed to serve your load today is much less than
14 3-167 kVA transformers. And so the standard rental
15 amount that is a credit provided against the rental
16 amounts of what you actually have out there is less.
17 So the difference between those two numbers has gone
18 up.

19 Q Am I credited for when I did use the
20 amount?

21 A I'm not sure I understand.

22 Q Well, obviously the amount of electricity

1 that I use is used to base these -- whether it's
2 excess or not excess.

3 A Right.

4 Q So at the point -- we have a point of
5 maximum usage on this letter back in '93 of 430 from
6 both -- that's maximum. There is no minimum listed,
7 no minimum listed at all. So that leaves it wide
8 open for you to declare what the minimum would be.
9 What was the minimum in '93?

10 A Well, the 1993 -- when we size facilities
11 we base it on the maximum. It makes no sense to base
12 it on the minimum because --

13 Q In this situation is what I would think,
14 no?

15 A No, because if we base the facilities on
16 your minimum load, when you exceed that minimum load
17 the facilities would fail.

18 Q No, no. That's not what I mean because at
19 the maximum you would not charge me rental, I was
20 told that. If I was using the maximum amount of kVAs
21 that was possible to use and I was paying for them,
22 then I would not be charged this rental fee. But

1 because of the downturn in the economy that the whole
2 country has suffered, including Commonwealth Edison
3 and myself, Commonwealth Edison, the powers that be
4 there have decided to invoke something that they had
5 passed into law or did something in 2009 that makes
6 them available to turn around and charge me excess
7 rent on equipment that I no longer have the business
8 to demand the amount of electricity. But not to say
9 that won't change in the future, all right, and
10 that's not saying that you have any output there to
11 change that in the future that you would take that
12 bill and take it away. But because now we have a
13 downturn in the economy you have an outlet to turn
14 around and charge me for equipment that was put in 20
15 years ago -- or 17 years ago and you want to turn
16 around and say because I have a downturn in my
17 business and you have a downturn in your business
18 we're going to make the situation for you work.

19 JUDGE RILEY: Mr. O'Farrell, this is a speech
20 now. There doesn't seem to be a question pending.

21 MR. O'FARRELL: That's a question.

22 MR. GOLDSTEIN: Do you want to respond to that,

1 Mr. Mueller?

2 JUDGE RILEY: Can you respond to it?

3 THE WITNESS: Yes. We agree that your usage
4 today is not as high as it was when it was estimated
5 back in 1993. Your monthly bill that you pay today
6 is less because your usage is less.

7 MR. O'FARRELL: I disagree.

8 JUDGE RILEY: Excuse me. It's not -- we're not
9 in an argument, Mr. O'Farrell. Please let him answer
10 the question.

11 THE WITNESS: So the facilities that are out
12 there serving your business, there are two
13 transformations out there. They're still out there,
14 they're still serving you, they're still an
15 investment out there made by ComEd. And since the
16 cost recovery is not coming through the monthly
17 usage, the question is how does that cost get
18 recovered? Does it get recovered either through the
19 customer that's using the facilities or through some
20 other method, which normally would be through other
21 rate payers. The Public Utilities Act states that
22 the cost should be imposed on the cost causer. It's

1 ComEd's view that Kazmier Tooling is the cost causer
2 in this instance.

3 BY MR. O'FARRELL:

4 Q Not business?

5 A I'm not sure what you mean.

6 Q The cost causer as you use that term is
7 because of business to me, otherwise I would be using
8 the service gladly if I had the demand for my
9 business, but I don't. Will I in the future, I'm
10 hoping to, depending on what we can do about bringing
11 manufacturing back to this country, which is another
12 subject altogether, but it has to do with the
13 situation. The situation --

14 JUDGE RILEY: No, this is a speech.

15 MR. O'FARRELL: All right.

16 JUDGE RILEY: Did you have any further
17 questions?

18 MR. O'FARRELL: Yeah, there is one more.

19 BY MR. O'FARRELL:

20 Q When does Commonwealth Edison or how does
21 Commonwealth Edison recover the cost through the
22 normal procedures? This, like I said, these have

1 been installed since '93, what percentage of the cost
2 of these transformers has Commonwealth recovered?
3 Because I know what I paid in my electric bills since
4 then. I've got that number, I've got a round figure
5 of \$210,000. I don't know what this bank of
6 transformers costs. I know I paid to have them
7 installed, \$3,000, I have the check number written
8 out in 1993, but how long does it take for
9 Commonwealth Edison to recover that cost? Is there a
10 formula for that? There should be.

11 A If you're referring to the rental amounts
12 on the transformers.

13 Q The cost of the transformers. Not the
14 rental, the cost of the transformers.

15 A Well, the cost of the transformers is paid
16 by ComEd at the time they purchase the transformers.

17 Q Based on the rental fee that was paid by
18 the company. As I understand what you're telling me
19 you have to recover that cost?

20 A The rental fee --

21 MR. GOLDSTEIN: Let him answer the questions
22 will you, please.

1 JUDGE RILEY: I've got it, Mr. Goldstein.

2 Mr. Mueller, please continue.

3 THE WITNESS: The rental fees recover the

4 purchase price cost of the transformers over a period

5 of 30 years. The monthly charges recover the cost,

6 the purchase price of the cost of those transformers

7 over 30 years, that's the basis for the monthly

8 rental --

9 BY MR. O'FARRELL:

10 Q I misheard you, I heard two things here. I

11 heard monthly cost, monthly cost of the billing?

12 A The monthly rentals.

13 Q I didn't pay a monthly rental fee.

14 A We understand that and that's one of the

15 reasons why we're here is that you should have been

16 paying a monthly rental.

17 Q Why wasn't I?

18 JUDGE RILEY: Continue with your answer,

19 Mr. Mueller.

20 THE WITNESS: ComEd bills monthly rentals for

21 transformers and in that rental it recovers the

22 cost -- the purchase price cost of the transformers

1 themselves and also any maintenance of those
2 transformers. That is all in the monthly rental
3 that's billed to the customer.

4 BY MR. O'FARRELL:

5 Q Well, how did they not charge me a monthly
6 rental fee?

7 A That was a mistake on ComEd's part. They
8 should have billed you for the rental ever since 1993
9 when those transformers were installed.

10 Q Can you prove that to me?

11 A Can I prove it to you? It's based on the
12 tariffs that were in effect in '93 and are still in
13 effect.

14 Q That there isn't, like, another customer
15 out there with a bank of transformers that doesn't
16 receive --

17 MR. GOLDSTEIN: I'm going to object.

18 JUDGE RILEY: What's your objection?

19 MR. GOLDSTEIN: It's irrelevant what other
20 customers are doing, it's Mr. O'Farrell and
21 Kazmier Tooling's complaint.

22 JUDGE RILEY: He has a point, Mr. O'Farrell.

1 What other customers -- I don't even think
2 Mr. Mueller can answer that question, whether or not
3 there are other customers that aren't being billed at
4 the present time.

5 MR. O'FARRELL: He said that was a mistake by
6 Commonwealth Edison. I don't believe that was a
7 mistake. There is no proof to me, there should be a
8 way of proving that to me, that it was a mistake.

9 JUDGE RILEY: Your testimony was that there
10 were tariffs in effect at the time that provided --
11 that allowed ComEd to bill back in 1993 for the
12 rental of those transformers.

13 THE WITNESS: Correct.

14 JUDGE RILEY: All right. The testimony is what
15 it is.

16 MR. O'FARRELL: I don't have a tariff. I have
17 a signature.

18 JUDGE RILEY: The tariffs aren't filed with
19 you, the tariffs are filed with the Commission.

20 MR. O'FARRELL: This is a document, it's not
21 addressed to me, I don't know who this person is, but
22 it's about my company and it has to deal with the

1 tariff at the time and this is what I received
2 yesterday. All right. This is what they failed to
3 give me. But I don't know if that was for me or
4 somebody else because it's my company, but it's not
5 me.

6 JUDGE RILEY: Mr. Goldstein, it's the -- I
7 believe it's ComEd Exhibit 4 that he's referring to.
8 It's been marked as Exhibit 4.

9 Were you going to have testimony to
10 that later on?

11 MR. GOLDSTEIN: Yes, we will, Judge.

12 JUDGE RILEY: All right.

13 MR. GOLDSTEIN: Maybe Mr. O'Farrell could
14 reserve his questions with respect to this document
15 to the next witness.

16 JUDGE RILEY: That's what I was going to
17 suggest. It hasn't even been testified to yet, so
18 there hasn't been any foundation for it.

19 Did you have anything further for
20 Mr. Mueller?

21 MR. O'FARRELL: I believe that Commonwealth --

22 JUDGE RILEY: My question was did you --

1 MR. O'FARRELL: All right.

2 BY MR. O'FARRELL:

3 Q Is there any way that Commonwealth recovers
4 any of the cost of the transformers in their billing?
5 You would have to break down the billing for me to
6 explain it because it doesn't state that and I
7 brought three bills here asking that question.

8 Is there any recovery in the electric
9 that you provide for the cost of the transformers?

10 A Yes.

11 Q This is besides the rental?

12 A The monthly bill that ComEd issues
13 customers for standard service includes cost recovery
14 for standard facilities which includes transformers.
15 In your case, your standard transformers were the
16 3-167 kVA transformers. But you have more that
17 3-1673 kVA transformers. So, therefore, the rental
18 applies for the excess of the transformation that's
19 serving your business.

20 Q So the standard is the three kVA
21 transformers and the excess is the single?

22 A The excess is the difference, right,

1 between the standard transformers and what the actual
2 transformers are that are actually out there serving
3 your business.

4 Q Now, the new services was the three
5 transformers I had installed?

6 A Correct.

7 Q The old service was the single transformer.
8 So shouldn't I be renting the single transformer?

9 A Back in 1993 the rental amount that was
10 determined back then it never got billed. Yes, that
11 was the difference between the 3-167s and the total
12 of the 3-167s and the other transformer bank that was
13 out there.

14 Q Now, the other question I have for you on
15 my usage you said is well under 100 now?

16 A It was a little over 100 kilowatt. Your
17 maximum demand usage in the last three years was a
18 little over 100 kilowatts.

19 Q Now, would it be wrong for me to ask you
20 what it was in the overall period of the transformers
21 usage?

22 A In the past 20 something years? I can't --

1 Q No, 17.

2 A I don't have those records. I can't answer
3 that.

4 Q All right. Because here's the situation,
5 it's a downturn in the economy?

6 JUDGE RILEY: All right -- strike that.

7 Do you have any other questions for
8 Mr. Mueller?

9 MR. O'FARRELL: No.

10 JUDGE RILEY: Thank you.

11 Mr. Mueller, thank you for your
12 testimony. We may be recalling you later, I don't
13 know.

14 Mr. O'Farrell, I want to turn back to
15 you and continue with your direct examination with
16 regard to your complaint. And thus far it's my
17 understanding that you filed this complaint because
18 you had, without notice or warning, received a bill
19 for \$2,000.

20 MR. O'FARRELL: A past notice bill.

21 JUDGE RILEY: For \$2,081.28 with a notice that
22 you were going to have to pay \$86.72 going forward

1 for rental on transformers --

2 MR. O'FARRELL: Monthly.

3 JUDGE RILEY: For monthly rental on

4 transformers that had been installed back in -- you

5 said 1993.

6 Did you at any time when those -- what

7 was the cost -- again, tell me what was the reason

8 that you needed the transformers installed? Why were

9 they installed?

10 MR. O'FARRELL: I needed it to provide me with

11 enough electricity to run my business at maximum

12 peak.

13 JUDGE RILEY: All right. Understood. And at

14 that time did Commonwealth Edison come out and

15 install those transformers?

16 MR. O'FARRELL: They did. Now, who decided

17 what size transformers they were, that was

18 Commonwealth Edison's decision.

19 JUDGE RILEY: Understood. But at any time did

20 they tell you that you were going to have to pay rent

21 on those transformers, did they tell you at the time

22 they installed it?

1 MR. O'FARRELL: No.

2 JUDGE RILEY: When did you first find out that
3 you were going to have to pay rent for those
4 transformers?

5 MR. O'FARRELL: April of 2011.

6 JUDGE RILEY: All right. And did you ever sign
7 a rental agreement to your knowledge?

8 MR. O'FARRELL: No. Never.

9 JUDGE RILEY: Is there anything else that you
10 want to tell the Court with regard to your complaint?

11 MR. O'FARRELL: Just that I paid \$210,000 in
12 the last 17 years in electric bills and I don't know
13 what formula they use to collect the cost on the
14 electric bills, and that would be nice to know to see
15 if they've already received the cost of the
16 transformers in the last 17 years and how do they
17 base their charge of \$86.84.

18 JUDGE RILEY: To your knowledge --

19 MR. O'FARRELL: They haven't been replaced,
20 they're still the same equipment that was there.
21 There has been no maintenance on them.

22 JUDGE RILEY: Are you saying the same

1 transformers that were installed in 1993 exist today?

2 MR. O'FARRELL: Yes. Correct.

3 JUDGE RILEY: There -- to your knowledge, did
4 anyone that works for you ever sign a rental
5 agreement?

6 MR. O'FARRELL: No, to my knowledge.

7 MR. GOLDSTEIN: Judge, you know, we could
8 recall Mr. Mueller to discuss the fact that there was
9 no signed rental agreement if you'd like.

10 JUDGE RILEY: But it's Mr. O'Farrell's
11 testimony that I want.

12 MR. GOLDSTEIN: I understand that.

13 JUDGE RILEY: To your knowledge, were any of
14 your employees ever told that there was going to be a
15 rental charge for those transformers?

16 MR. O'FARRELL: Now, this could be an outside
17 contractor, no.

18 JUDGE RILEY: I'm saying any of your employees.

19 MR. O'FARRELL: No, not to my knowledge or my
20 permission.

21 JUDGE RILEY: No foreman. No manager. No one
22 like that in your employ.

1 All right. I don't have any further
2 questions for Mr. O'Farrell at this time.

3 Do you have any cross-examination?

4 MR. GOLDSTEIN: I have no cross-examination. I
5 would like to call Mr. Mueller back to discuss the
6 issue of the rental agreement.

7 JUDGE RILEY: Okay. Mr. Mueller, you're still
8 under oath and this is continuing direct examination
9 of Mr. Mueller.

10 REDIRECT EXAMINATION

11 BY

12 MR. GOLDSTEIN:

13 Q Mr. Mueller, you've heard Mr. O'Farrell
14 state that there was no signed rental agreement.
15 Could you address that issue?

16 A Yes. Normally when a customer requests
17 service and they request non-standard service ComEd
18 would prepare documents that would list standard
19 facilities and also the required facilities that are
20 in place or will be in place after the service
21 request is met. Those are developed under the
22 guidelines in the tariff and in accordance with the

1 tariff and that is the basis for the charges. ComEd
2 normally provides a document to the customer listing
3 and showing what those transformer facilities are and
4 what the associated charges are. I cannot say
5 whether or not those documents were provided back
6 17 years ago or who they may have been provided to
7 but that's the normal course of how we operate.

8 JUDGE RILEY: Anything further?

9 BY MR. GOLDSTEIN:

10 Q Let's assume that there was no signed
11 rental agreement between Kazmier Tooling and ComEd,
12 does ComEd still have the ability to charge rental
13 charges for the non-standard facilities out at
14 Kazmier Tooling?

15 A ComEd is obligated to operate and bill
16 under the tariff. And under the tariff, yes, it had
17 the ability and the obligation to bill for those
18 facilities.

19 Q And that's under the non-standard service
20 tariff?

21 A It would be under Rider NS.

22 Q That you've already discussed in your

1 testimony?

2 A Yes.

3 MR. GOLDSTEIN: I have nothing else.

4 JUDGE RILEY: Any further questions for

5 Mr. Mueller based on what he's just testified to?

6 RECROSS EXAMINATION

7 BY

8 MR. O'FARRELL:

9 Q Are we talking about the single transformer

10 or the triple transformer?

11 A We're talking about both.

12 Q Well, one is the standard service and one

13 is a non-standard?

14 A Correct.

15 Q All right. So we can't talk about both if

16 we're talking about non-standard equipment, can we?

17 A Well, in order to determine the monthly

18 rental that's due we have to know what is actually

19 out there. What is out there is actually two

20 transformations. Your standard transformation is a

21 single transformation.

22 Q That I share?

1 A No. Both of those transformations are
2 serving your business.

3 Q But one is shared with other residential
4 customers?

5 A One of them is a community bank, which can
6 be shared with others.

7 Q It is.

8 A And in those cases where a customer takes
9 service from a community bank, the rentals are based
10 only on your share or that portion of that community
11 bank. So in determining the rental amounts for your
12 case you had the community bank that was already
13 there existing and then you also had the transformers
14 that were installed in 1993, okay. Those were your
15 required transformers. Your standard transformers
16 back in 1993 were determined to be 3-167 kVA
17 transformers.

18 Q And who determined that?

19 A ComEd determines that based on information
20 provided by the customer.

21 Q Now, in the past, 20 years ago, did
22 Commonwealth Edison ever tell a customer, Hey, you

1 might as well go bigger because at some time or
2 another if you keep expanding you might need more
3 power?

4 A No.

5 Q That was never said to a customer by
6 Commonwealth Edison, never?

7 A No. We always base it on what the customer
8 tells us. I will say that customers do sometimes ask
9 us to put in larger transformers because they expect
10 to expand their business or increase their load, but
11 we don't do that on our own.

12 Q You would never recommend that to a
13 customer? Because that was recommended to me?

14 A I would say as a policy ComEd --

15 Q Because it would be the same --

16 MR. GOLDSTEIN: I have to object now, Judge,
17 because he's arguing with the witness.

18 JUDGE RILEY: Mr. Mueller, please complete your
19 answer.

20 THE WITNESS: As a policy, ComEd would not make
21 recommendations, we would only meet what the
22 customer's request is. So if they determine that,

1 Hey, we think we're going to grow and we want to put
2 in something a little larger, then we'll do that for
3 them, but we would never do it on our own.

4 BY MR. O'FARRELL:

5 Q Again, you would do that, though?

6 A If we were requested to.

7 Q In a discussion with a customer?

8 A If we were requested to, we would do it.

9 Q In a discussion with the customer?

10 A It would have to be a formal request, then
11 we would do it.

12 Q All right. The conversation I had was
13 that.

14 JUDGE RILEY: Any further questions?

15 MR. O'FARRELL: No.

16 EXAMINATION

17 BY

18 JUDGE RILEY:

19 Q Mr. Mueller, is it my understanding that
20 Commonwealth Edison just erroneously failed to bill
21 for the rental on those transformers from 1993 up
22 until April of 2011?

1 A Yes.

2 Q And is there any explanation from ComEd as
3 to why that mistake occurred?

4 A I can't say why that occurred.

5 JUDGE RILEY: All right. Thank you,
6 Mr. Mueller.

7 MR. GOLDSTEIN: Again, I would move into
8 evidence ComEd Exhibits 1 and 2.

9 JUDGE RILEY: We're going to deal with those
10 later. I want to get back to Mr. O'Farrell just to
11 do some housekeeping here.

12 SHAWN J. O'FARRELL,
13 called as a witness herein, having been first duly
14 sworn, was examined and testified as follows:

15 EXAMINATION

16 BY

17 JUDGE RILEY:

18 Q Are you the owner of Kazmier Tooling?

19 A I am.

20 Q Are you the sole owner of Kazmier Tooling?

21 A No. My son has 20 percent and will
22 continue to receive a little bit every year until I

1 retire. Hopefully, if it's still available.

2 Q For now you're an 80 percent owner; is that
3 correct?

4 A Yes.

5 Q And is it my understanding that the name on
6 the Commonwealth Edison account is Kazmier Tooling,
7 it's not your personal name; is that correct?

8 A Yes.

9 Q All right. What is Kazmier Tooling? What
10 kind of a business is that?

11 A I manufacture tooling for the manufacturing
12 industry. So I have six machines that require a
13 large amount of electricity to run, and right now I'm
14 running at about 50 percent.

15 Q What kind of tools do you manufacture?

16 A I manufacture press brake tooling.

17 Q I'm sorry?

18 A Press brake tooling for fabricating sheet
19 metal and then products that sell to everybody. You
20 know, most manufacturers buy my tools if they
21 manufacturer still in this country.

22 Q And that's what's been going on at the

1 Kazmier Tooling since 1993 since the transformers
2 were installed?

3 A Yes, sir.

4 Q And it goes on to the present day; is that
5 correct?

6 A Pardon me?

7 Q It goes on to the present day, you're still
8 doing that work to the present day; is that correct?

9 A Yes, sir. Not at the capacity I did, but
10 I'm still doing it.

11 Q Understood. I believe that's everything I
12 have for Mr. O'Farrell for right now.

13 Mr. Goldstein, do you have any
14 cross-examination?

15 MR. GOLDSTEIN: I have no questions of
16 Mr. O'Farrell.

17 JUDGE RILEY: Mr. O'Farrell, I'm going to
18 conclude that we've finished your case in chief, that
19 you have set forth the details of your complaint.

20 I'm going to turn to Mr. Goldstein, do
21 you have another witness you want to call?

22 MR. GOLDSTEIN: Yes, I do. I call

1 Miguel Mastache.

2 (Witness sworn)

3 MIGUEL MASTACHE,

4 called as a witness herein, having been first duly

5 sworn, was examined and testified as follows:

6 DIRECT EXAMINATION

7 BY

8 MR. GOLDSTEIN:

9 Q Mr. Mastache, please state your name for

10 the record and spell your name.

11 A My name is Miguel Mastache, M-i-g-u-e-l,

12 M-a-s-t-a-c-h-e.

13 Q And by whom are you employed and in what

14 capacity?

15 A I am employed by ComEd and currently a

16 senior engineering design technician at the Chicago

17 South headquarters.

18 Q And how long have you been employed by

19 ComEd and please tell us what other departments you

20 have worked at at ComEd?

21 A I have worked for ComEd for eight years

22 entirely in the New Business Department.

1 Q And what are your duties as a senior
2 engineering design technician?

3 A My duties are to be the single point of
4 contact with our customers while designing and
5 project managing their service request projects. I
6 am also responsible for determining the size of the
7 equipment needed based on existing engineering
8 standards and practices adopted by the company.

9 Q What is the purpose of your testimony
10 today?

11 A I am here to describe the facilities
12 serving Kazmier Tooling's account and the charges
13 applicable to the facilities used to serve Kazmier.

14 Q And you went out and personally did an
15 audit at Kazmier Tooling; is that correct?

16 A That is correct.

17 Q Let's begin by describing the facilities
18 serving the Kazmier Tooling account.

19 A On June 30, 2011 I found the customer was
20 connected to a 120/240 transformer bank consisting of
21 a 15 kVA transformer and a 25 kVA transformer. The
22 customer was also connected to a 277/480 volt

1 transformer. This was a bank of 3-167 kVA
2 transformers wired to provide 277/480 volt service.

3 Q And the date that you went out to
4 Kazmier Tooling was what date?

5 A June 3, 2011.

6 Q And that was a field audit that you
7 performed on that date; is that correct?

8 A That is correct.

9 Q And did your field audit ComEd's facilities
10 that were the basis for the charges listed on a
11 letter sent to the customer dated May 25, 2011?

12 A The purpose of the field audit was to
13 report all facilities found that serve the customer.
14 The audit did confirm the installed required
15 facilities as referenced on the letter and also
16 referenced in the electronic record of the customer's
17 last request for a service change in 1993.

18 Q And that May 25, 2011 letter has been
19 marked as ComEd Exhibit 4 -- 3; is that correct?

20 A That is correct.

21 Q Let's now -- could you further describe
22 what happened when you went out there to the -- what

1 is shown on ComEd Exhibit No. 4 -- what is that
2 exhibit and what is shown on that exhibit?

3 A ComEd Exhibit 4 is the electronic record of
4 the 1993 service request indicating an existing
5 service from the 120/240 volt transformer consisting
6 of the 25 and 15 kVA transformer and a request for a
7 second point of service at 277/480 volts based on the
8 information provided by the customer at that time.
9 3-167 kVA transformers and related protective
10 equipment including the fuses, cutoffs and arresters
11 were installed to serve an estimated total maximum
12 kilowatt demand load of 430 kW.

13 The customer's standard transformers,
14 based on the total 430 kW were 3-167 kVA
15 transformers. That is, ComEd could have served the
16 customer, the total of both service points with just
17 3-167 kVA transformers. However, the customer
18 requested the second point of service at a different
19 location and voltage.

20 Today, the customer's total maximum
21 demand load has been much less than what was built
22 for in 1993. The current standard transformers and

1 protective equipment are based on the maximum demand
2 load from the previous three years. Therefore, the
3 transformers today are smaller than the standard
4 transformers determined in 1993. Going back three
5 years to determine maximum kilowatt demand would
6 include months prior to the recent recession that may
7 have affected the customer's load.

8 Q What were the Rider NS non-standard
9 services and facilities charges?

10 A The non-standard service facilities charges
11 are for all equipment that is installed in excess of
12 the standard facilities out in the field. In this
13 case, the standard was 3-167 kVA transformers in 1993
14 and the excess was everything beyond that, including
15 the 3-167 kVA transformers and their protective
16 equipment and the 25/10 kVA transformer and its
17 protective equipment.

18 In today's terms the new standard is
19 3-37 and a half kVA transformers at 277/480.

20 Q That's 277/480 volts?

21 A Correct. And that's your current day
22 standard and they're currently served by 120/240

1 community bank of which they are being charged
2 rentals for their portion, which is 2-10 kVA
3 transformer based on their demand load on a community
4 bank and 3-167 kVA transformers being served at
5 277/480 volts.

6 Q And specifically what are those charges?

7 A The charges are the two required
8 transformations at 120/240 and 277/480 volts, the
9 arresters and fuses at a combined rental charge
10 of \$127.05 based on the 1993 rentals in effect at the
11 time. The customer's standard transformer facilities
12 at a rental charge of \$38.40 based on the 1993
13 rentals in effect at that time. The customer's
14 monthly rental charge is zero if their standard
15 rental exceeds their required rental amount.
16 Otherwise, the monthly rental charge is the
17 difference of the required and standard.

18 The final rental charge going forward
19 in this case is \$86.72 after the removal of a \$1.93
20 in franchise costs.

21 Based on the standard transformers and
22 protective equipment indicated in the 1993 service

1 requests, the rentals should have been \$17.55 per
2 month. As stated earlier, this amount is based on
3 the standard transformation of 3-167 kVA transformers
4 at 277/480 volts. After the removal of the franchise
5 costs, back-bill is \$374.88 determine by taking the
6 17.55 monthly rental for 24 months and crediting the
7 1.93 franchise cost for 24 months.

8 Q And what is the time period covering the
9 two year back-bill?

10 A The audit back-bill is from March of 2009
11 through March of 2011.

12 Q Does this conclude your testimony?

13 A Yes.

14 MR. GOLDSTEIN: I have nothing further of the
15 witness, Judge. I would move into evidence
16 ComEd Exhibits 3 and 4.

17 JUDGE RILEY: Thank you. I'm going to hold
18 ruling in abeyance pending cross-examination.

19 Mr. O'Farrell, do you have any
20 questions for Mr. Mastache?

21 MR. O'FARRELL: Does the dates of all this back
22 rent complies with the date of the notification for

1 the Commerce Commission's statements for their new
2 MC -- it all complies, it all rotates back to
3 November of '09.

4 JUDGE RILEY: Is that your question for
5 Mr. Mastache?

6 CROSS EXAMINATION

7 BY

8 MR. O'FARRELL:

9 Q The question is, is that why it went back
10 to March of '09? The rental fees went back to '09,
11 is that the last statement that they produced their
12 riders was dated January of '09, so that gave you
13 permission from the rider to go back to '09 with the
14 rental fees?

15 A That is outside the realm of my expertise.

16 MR. GOLDSTEIN: That's more of a question for
17 Mr. Mueller. We would be happy to have Mr. Mueller
18 answer that question.

19 JUDGE RILEY: In other words, Mr. Mastache, you
20 can't answer the question?

21 THE WITNESS: That correct.

22 MR. GOLDSTEIN: Do you want Mr. Mueller --

1 JUDGE RILEY: Let's finish with Mr. Mastache.
2 Do you have any other questions for
3 Mr. Mastache?
4 MR. O'FARRELL: It would just be that I believe
5 they comply with each other. They didn't go after
6 the rental fees until they passed that.
7 JUDGE RILEY: Okay.
8 EXAMINATION
9 BY
10 JUDGE RILEY:
11 Q Mr. Mastache, did you conduct a field
12 audit?
13 A Yes, I did, sir.
14 Q Okay. And, again, explain to me what
15 triggered the field audit?
16 A The field audit was triggered by the
17 customer contacting Commonwealth Edison and
18 requesting a field audit confirmation of the
19 equipment installed.
20 Q And when was that request made?
21 A I believe it was made in May, I don't have
22 the specific date.

1 Q May of 2011?

2 A That is correct, sir.

3 Q And you conducted that field audit
4 subsequent to that?

5 A That is correct, sir.

6 Q And is that -- maybe missing a few steps
7 here, but is that what ultimately led to the customer
8 getting the bill for \$2,086?

9 A No, the audit for the standard and the
10 required facilities was done back in March --
11 actually I believe in February.

12 Q Say that again.

13 A The audit process starts with a back office
14 audit based on the facilities that are reported to be
15 on their account. We determine what is feeding the
16 customer and use their loads to determine what their
17 standard is.

18 Q Is there anything in particular that
19 triggers that back office audit?

20 A The back office audit is triggered by
21 customers that are being served by more than one
22 service per our records that are not paying any

1 rentals.

2 Q And this is something that is routinely
3 checked by Commonwealth Edison?

4 A It is -- to my understanding it is a
5 process that we started in November of 2010.

6 Q And what led from there, to your knowledge,
7 to the customer calling you for a field audit?

8 A I'm sorry.

9 Q In other words, there was a back office
10 audit?

11 A Yes.

12 Q And somewhere along the line the customer
13 called you for a field audit?

14 A Yes. The customer is given the option on
15 the letter that presents the charges to contact
16 Commonwealth Edison's business hot line to have the
17 charges explained to them. And if they request
18 confirmation in the field, that request gets routed
19 to the office that it pertains to.

20 Q I just want to make sure I understand the
21 sequence of events. There was a back office audit,
22 did that lead to the customer getting that \$2,000

1 bill?

2 A That is correct.

3 Q And is that, to your knowledge, what
4 triggered his call to you, to Commonwealth Edison for
5 the field audit?

6 A That is correct.

7 JUDGE RILEY: All right. Thank you. I don't
8 believe I have anything further for Mr. Mastache.

9 Did you want to direct another
10 question to Mr. Mueller.

11 MR. O'FARRELL: Yes, but I forgot what it was.

12 JUDGE RILEY: Mr. Mueller, I think we have to
13 recall you one more time.

14 Thank you, Mr. Mastache.

15 Do you remember what the question was
16 you wanted to ask him?

17 RECROSS EXAMINATION

18 BY

19 MR. O'FARRELL:

20 Q On the maximum demand which is what
21 triggers the nonstandard equipment, all right,
22 because I don't believe that -- I don't believe that

1 the non-standard equipment would have been triggered
2 if my usage was up. Okay. So we have a maximum of
3 430 kVA but we have no minimum.

4 Now, you state that because we have to
5 state a maximum, but if we couldn't pull more than
6 that, otherwise we could possibly blow up the
7 transformer. But that's not why I ask the question.
8 I ask the question because maximum is how the billing
9 cycle works and how you recover your cost on your
10 transformers and within a realm. We have a maximum
11 KW usage, we don't have a minimum which would trigger
12 your rentals. You'll state that that doesn't happen,
13 but in this case I believe it did happen because of
14 the minimum usage of the power now that Commonwealth
15 Edison wants to recover a rental from it. What is
16 the minimum that would cause that to recover off that
17 bank of transformers?

18 A If I understand what you're trying to get
19 at the maximum demand.

20 Q Is 430.

21 A Is the most amount of load that you have
22 connected at any one time and that maximum demand

1 determines the size of equipment that we have to
2 install. The minimum does not determine the size of
3 the equipment.

4 Now, what has happened since 1993 is
5 that your load has been -- has reduced, has been
6 reduced.

7 Q Not from 1993, but from 2000, yes.

8 A Okay. But currently when we look back
9 three years, the maximum demand load that is on
10 record is now not 430 kilowatts it's a little over
11 100 kilowatts.

12 Q Per month?

13 A Yes.

14 Q Okay. That's per monthly, that doesn't
15 state that on the document. It just says that -- we
16 assume it's per month.

17 A Yes, it's a monthly amount.

18 Q And that's what possibly could have
19 triggered the rental?

20 A Well, it's what determines the standard
21 transformers for the rental amount going forward.

22 Q As of what date?

1 A As of when the audit was done in March of
2 2011.

3 Q And it has nothing do with the -- none of
4 the supplements that were issued by Commonwealth
5 Edison through their tariffs?

6 A No. If you're referring to the two-year
7 back bill, the reason --

8 Q I'm referring to the minimum usage of the
9 kVA and then the charge of rental on the unit because
10 I was told that -- I was told by an employee of
11 Commonwealth Edison -- and I could issue his name --
12 but this would not have happened unless the usage was
13 way down?

14 A Well, if your usage was up at the
15 430 kilowatt level you still --

16 Q Let's say it was 330, down 100.

17 A Okay. If your usage was at 330 we would
18 determine what is the standard transformer to serve
19 330 at a single point. Now, you have two
20 transformers that serve two points. So we look at
21 what is the rental amount pertaining --

22 Q I have a bank of transformers and a single

1 transformer that's a common transformer used with
2 other people?

3 MR. GOLDSTEIN: Mr. O'Farrell, could you please
4 let the witness answer question fully and then you
5 can ask another question. It gets very confusing
6 when you keep interrupting.

7 JUDGE RILEY: Objection sustained.

8 Mr. Mueller, please finish your
9 answer.

10 THE WITNESS: The two transformers that are out
11 there one of them is a community bank as you point
12 out and the amount that you get billed for that
13 community bank, though, is only based on the size of
14 the bank that would be required to serve only your
15 load. For instance, what's actually out there is a
16 15 kVA and a 25 kVA transformer. What is being
17 billed for in your rental amount going forward is
18 2-10 kVA transformers. So you're not getting billed
19 in the rental for the full size of that community
20 bank.

21 The 3-167 kVA transformers, you are
22 the only one that is using those transformers. Those

1 are the ones that were requested in 1993. So that
2 rental amount you are getting charged the full amount
3 for that.

4 BY MR. O'FARRELL:

5 Q And is this common for all usage now? If I
6 had a single point of service would this rental go
7 away?

8 A If you had a single point of service and
9 that service was sized for what your maximum demand
10 load is at the time there would be no rentals.

11 Q So if I were to turn around and take the
12 common service?

13 A Community.

14 Q And put that in a different name, would
15 that solve this problem?

16 A You're asking a different question, I
17 think. You said put it in a different name.

18 Q Yeah, take it -- it's no longer
19 Kazmier Tooling, it would be Shawn O'Farrell?

20 A I guess that would generate a lot more
21 questions on our part, like what is Shawn O'Farrell's
22 business?

1 Q I rent space to Kazmier Tooling for office?

2 A I think we're getting into a lot of things.

3 Q I'm just looking for a simple solution to a

4 complex problem.

5 JUDGE RILEY: Well, he can't provide that. He

6 can only answer questions to what he's testified to.

7 MR. O'FARRELL: All right.

8 JUDGE RILEY: Anything further?

9 MR. O'FARRELL: No.

10 JUDGE RILEY: Thank you again, Mr. Mueller.

11 Mr. Goldstein, do you have any other

12 witnesses?

13 MR. GOLDSTEIN: I have no other witnesses.

14 JUDGE RILEY: Mr. O'Farrell, did you have

15 anyone else you wanted to call?

16 MR. O'FARRELL: No. I'm here on my own.

17 JUDGE RILEY: All right. We are pretty much at

18 the end of the testimony phase, then.

19 MR. GOLDSTEIN: You haven't ruled on the

20 admissibility.

21 JUDGE RILEY: I understand. I want to get to

22 Mr. O'Farrell first because it's his case in chief.

1 Mr. O'Farrell, you've left me with
2 quite a number of documents, but I know that most of
3 them if not all of them have also been submitted by
4 Commonwealth Edison and have already been marked as
5 exhibits.

6 MR. O'FARRELL: Well, these are the bills that
7 I have currently and I would like an explanation of
8 that from Commonwealth Edison if I could have that.

9 JUDGE RILEY: I am sorry.

10 MR. O'FARRELL: On the current billing, we have
11 a delivery service by Commonwealth Edison that they
12 charge -- or they charge MC Squared who then charges
13 me and I would like a detailed explanation if any of
14 these individuals here can explain that to me because
15 I have two or three different companies that provide
16 me with bills and they all have different categories
17 in which there are fees attached to.

18 JUDGE RILEY: One thing I noted through the
19 testimony is that the bill that you're contesting,
20 the approximate \$2,000 and the \$86 a month going
21 forward is a direct product of a Commonwealth Edison
22 tariff.

1 MR. O'FARRELL: Right. But if Commonwealth
2 Edison is already charging me for usage of their
3 transformers in their billing, then I'm being charged
4 twice.

5 JUDGE RILEY: I'm not sure what you mean.

6 MR. O'FARRELL: All right. If you read their
7 line of billing there is -- can I bring that up to
8 you and let you read that -- there is different
9 categories in which they put in charges. It's a long
10 list of things with taxes and everything else. I
11 would like an explanation as to what these charges
12 pertain to and I believe that you will find that the
13 transformers is part of this service delivery charge
14 that they stack on because I do -- I don't pay a
15 minimum -- you know, a small electric bill, I pay a
16 pretty good sized electric bill and I believe that
17 part of that --

18 JUDGE RILEY: So are you -- now, this is the
19 \$2,081.28 that you are contesting in your complaint?

20 MR. O'FARRELL: No. What I'm saying is that
21 they want to charge me rental on a transformer bank
22 that they call specific special equipment and I

1 believe I'm already paying that into the fees that
2 they charge me and I need an explanation from Edison
3 that proves my point or disproves my point.

4 JUDGE RILEY: Mr. Goldstein.

5 MR. GOLDSTEIN: Yes, I guess we could recall
6 Mr. Mueller and if Mr. O'Farrell would show him the
7 document, he could explain it.

8 JUDGE RILEY: Could you breakdown that bill,
9 because that's the \$2,081, that's what you're
10 contesting.

11 MR. O'FARRELL: What I'm contesting is the
12 rental fees on the transformers which is back-pay
13 that Commonwealth Edison charges under --

14 JUDGE RILEY: You want a break down of the
15 charges on that bill.

16 MR. O'FARRELL: Those are delivery charges.

17 THE WITNESS: I'm looking at a bill and the top
18 part of the bill is delivery services from ComEd,
19 it's from February 16th to March 16, 2011 for 28
20 days. There is four line items under delivery
21 services for ComEd. The first line item says
22 customer charge.

1 MR. O'FARRELL: Right.

2 THE WITNESS: That amount covers the cost of

3 your service connection, which is the wires and the

4 connection that is made that goes directly into your

5 building or the connection that is made at the

6 transformer.

7 MR. O'FARRELL: That's the rental charge for

8 that?

9 THE WITNESS: No. Let me just finished that.

10 Plus it also covers the cost of the customer

11 service -- the customer service cost that ComEd

12 incurs to provide customer service. It also covers

13 Illinois -- the State of Illinois mandated charges

14 for renewable energy resources, for low income

15 housing assistance plans.

16 MR. O'FARRELL: We're looking at now delivery

17 charges for \$612, customer charges \$18.81.

18 THE WITNESS: And I'm trying to -- I'm still on

19 the first line item, customer charge, what goes into

20 that charge. I'm just giving you the items.

21 MR. O'FARRELL: Delivery service.

22 THE WITNESS: Rights. It's the customer

1 charge, it's the first line under delivery service.

2 So all those things that I mentioned are recovered in
3 the customer charge line item.

4 The next line item is the standard
5 metering charge. That recovers the cost of the
6 standard meter necessary to meter your service at a
7 single point.

8 MR. O'FARRELL: Now, because I have two meters.

9 THE WITNESS: And the third line item, the
10 distribution facilities charge, that varies every
11 month based on your maximum kilowatt demand used and
12 it recovers the cost of the distribution system
13 that's off your property which is the substations,
14 wires, poles, cables and also the transformer, the
15 standard transformer that serves your business at
16 Kazmier Tooling. It recovers the cost of the off
17 property facilities, the poles, wires and cable and
18 the standard transformer that serves your business at
19 Kazmier.

20 MR. O'FARRELL: How does it separate from the
21 two of them?

22 THE WITNESS: The separation comes because you

1 have two transformers there.

2 MR. O'FARRELL: I have two sources of
3 electricity?

4 THE WITNESS: Correct. And that requires the
5 two transformers.

6 MR. O'FARRELL: And this is only based on one
7 of them or is this based on --

8 THE WITNESS: What you're paying for -- part of
9 what the distribution facilities charge is for the
10 single standard transformer, not both.

11 MR. O'FARRELL: I don't understand. I'm really
12 confused now. I don't see a breakdown.

13 THE WITNESS: The distribution facilities
14 charge recovers in part the cost of the transformer
15 that's necessary to serve the customer at a single
16 point.

17 MR. O'FARRELL: It's not based on the kVA use?

18 THE WITNESS: It is. You can see --

19 MR. O'FARRELL: Don't I need both sources for
20 the kVA usage?

21 THE WITNESS: The total here, the 100 kW is the
22 total that was billed from both transformers,

1 correct.

2 MR. O'FARRELL: And they do recover costs for
3 both transformers?

4 THE WITNESS: No. The distribution facilities
5 charge recovers the cost of the standard transformer
6 that's needed to -- that would be needed to serve
7 your demand, your maximum demand.

8 MR. O'FARRELL: I'm confused again. I have two
9 sources. So this is -- is this a lump of the two
10 sources?

11 THE WITNESS: Right. In this month, okay, from
12 February to March the maximum demand that you set in
13 that time period was 101 kW.

14 MR. O'FARRELL: And you base the kW usage and
15 the amount you charge for the usage of the
16 transformer on the KW usage, right?

17 THE WITNESS: Right.

18 MR. O'FARRELL: The rental or the charge that
19 you would take off of it.

20 THE WITNESS: Right. Part of the recovery
21 that's made in the distribution facilities charge is
22 for the standard transformer only, not --

1 MR. O'FARRELL: Am I wrong to think that it's
2 possible that you are recovering some of the costs of
3 the other transformers from this, too? Because the
4 one common source of electricity isn't capable of
5 giving me this kW, is it?

6 THE WITNESS: This amount here is the combined
7 amount from both.

8 MR. O'FARRELL: I said would it be wrong for me
9 to assume that one source, the common source could
10 not possibly provide this amount of electricity and
11 you base the kilowatt hours the way you charge it and
12 you deduct the charge of the transformer from the
13 kilowatt hours. So it's not possible for the single
14 common use of the transformer to provide me with all
15 this electricity. So you are taking part of the
16 charge for the transformers from the other bank
17 because that would be the only way you could do that.

18 THE WITNESS: The community bank that you're
19 referring to could not supply 100 kW but the other
20 transformer could clearly supply that and more.

21 MR. O'FARRELL: So you are taking part of
22 that -- part of that fee is for the total use of --

1 the fee for the transformers coming out of that cost.
2 There is a fee that -- you take out a fee for the
3 single point of transformer.

4 THE WITNESS: No.

5 MR. O'FARRELL: There is a pull for that,
6 right?

7 THE WITNESS: The way the tariffs are designed
8 and the costs are allocated is that in the
9 distribution facilities charge every customer gets an
10 allowance for a standard transformer. And over the
11 course of the year, they look and they see as a
12 company what is the maximum demand that is necessary
13 that needs to be met with the equipment serving that
14 customer and that's called the standard transformer.

15 MR. O'FARRELL: This is my argument. My
16 argument is that I paid for these transformers in
17 every bill, a portion of the transformer.

18 THE WITNESS: No. The distribution facilities
19 charge only recovers the cost of the standard
20 transformer.

21 MR. O'FARRELL: Now, which is the standard
22 transformer?

1 THE WITNESS: In your case, your standard
2 transformer today is 3-37 kVA transformers.

3 MR. O'FARRELL: So I pay today and for the last
4 17 years I paid for those or have been paying for the
5 cost of those.

6 THE WITNESS: No, for the last 17 years you
7 have been paying a distribution facilities charge,
8 but you have not been paying the rental to recover
9 the cost of the non-standard transformer.

10 MR. O'FARRELL: Again, there was no rental.

11 JUDGE RILEY: This is argumentative.

12 MR. O'FARRELL: You keep bringing up something
13 that doesn't exist is argumentative. Here it is, I
14 am paying rental.

15 THE WITNESS: There is no transformer rental
16 listed.

17 MR. O'FARRELL: There is a charge in the
18 distribution facilities charge that accommodates the
19 transformers, that has a portion of it to pay for the
20 transformers.

21 THE WITNESS: It does recover the cost, but
22 only of the standard transformer.

1 MR. O'FARRELL: The argument would be what.

2 MR. GOLDSTEIN: Judge, he's just arguing.

3 JUDGE RILEY: We can only have one person
4 talking at a time.

5 Do you have an objection,
6 Mr. Goldstein?

7 MR. GOLDSTEIN: Yes. Mr. Mueller has been
8 trying to assist in explaining what's shown on the
9 bill. Mr. O'Farrell continues to argue with him
10 about what he has stated and we're going nowhere.
11 He's stated exactly what the charges are several
12 times, lets move on to the next charge.

13 JUDGE RILEY: Mr. Mueller, do the distribution
14 facilities charges have anything to do with the
15 rental charge?

16 THE WITNESS: The distribution facilities
17 charge, part of that cost is for a standard
18 transformer. Everybody is entitled to a standard
19 transformer and that's what the distribution
20 facilities charge recovers.

21 Now, in the case of a customer that
22 has more or in excess of a standard transformer,

1 that's when a rental would apply in addition to the
2 distribution facilities charge.

3 JUDGE RILEY: And is that what the \$2,081.28 is
4 for on this bill?

5 THE WITNESS: The \$2,000 was intended to be the
6 back-bill for that rental.

7 JUDGE RILEY: And that's for nonstandard?

8 THE WITNESS: For nonstandard.

9 JUDGE RILEY: And this also says it's a service
10 estimate; is that correct.

11 THE WITNESS: You're looking at the electronic
12 record for the service estimate request from '93; is
13 that right?

14 JUDGE RILEY: Well, I don't know. What I'm
15 looking at is a category two-thirds of the way down
16 the bill called miscellaneous and underneath it says
17 Service Estimate Request \$2,081.28?

18 THE WITNESS: Yes.

19 JUDGE RILEY: Which is the precise amount that
20 Mr. O'Farrell is complaining about.

21 THE WITNESS: Correct.

22 JUDGE RILEY: So that is an estimate.

1 THE WITNESS: That is a calculated amount based
2 on what the standard transformer is that's necessary
3 to serve his load, his actual load, and the
4 transformers that are actually in place out there at
5 Kazmier.

6 JUDGE RILEY: You say those are for standard
7 transformers?

8 THE WITNESS: It's the difference in the rental
9 between the standard transformer and the transformers
10 that are actually out there at Kazmier.

11 JUDGE RILEY: Okay.

12 MR. O'FARRELL: We have a standard bank of
13 transformers, which are the three transformers in the
14 bank that I had installed back in 2003 and we have a
15 common, those are my transformers, that's what you're
16 saying in the billing, those are what the charges are
17 based on. And then what you want to charge me rental
18 for is for the common use transformers.

19 THE WITNESS: Again, the --

20 MR. O'FARRELL: Because that's what you're
21 stating to me. You're telling me that this billing
22 is based on the bank of transformers that I had

1 installed.

2 JUDGE RILEY: Let's Mr. Mueller explain it
3 again.

4 THE WITNESS: It's the difference in the rental
5 amounts between the standard transformers that in
6 1993 were determined to be 3-167 kVA transformers and
7 it's the difference between that and what's actually
8 out there, which is the community bank and the
9 3-167s.

10 MR. O'FARRELL: Right. And we can only have
11 one point and if we had one point we would not be
12 incurring these charges. If I had the size of
13 transformers I have now, if I only had one source of
14 power coming into the building and I didn't have that
15 common source of power we wouldn't be here right now,
16 correct?

17 THE WITNESS: If you had only a single point of
18 service and that single point was sized to what your
19 actual load --

20 MR. O'FARRELL: What if it's not sized?

21 JUDGE RILEY: Let him finish.

22 THE WITNESS: And that transformer is sized to

1 what your actual load is, which is what you're paying
2 for every month then, yes, there would be no rental.

3 MR. O'FARRELL: So, again, this is based on my
4 minimum use, and that's what I'm trying to get from
5 you. I want to know what would be the minimum
6 trigger to take this away? What would I have to
7 provide by electricity to bring it up to have this go
8 away.

9 THE WITNESS: If you were to combine your load
10 that serves from the 120/240 volt transformer bank,
11 which is the community bank that you referred to, if
12 you were to be able to combine that load with your
13 other service point, serve from the 277/480 volt
14 service, okay, and you would have to do something
15 internally to, you know, make the transformation
16 voltages compatible and you took service from just
17 the single point and ComEd provided the transformers
18 that was matching the load that you have currently.

19 MR. O'FARRELL: The question here is that the
20 load that I have now is my maximum load. I'm not
21 using that now. I'm not saying that it will never
22 happen that I won't.

1 THE WITNESS: So the question would be --

2 MR. O'FARRELL: Where does it go away and when

3 does it come back, what would trigger it?

4 THE WITNESS: I guess we would ask you the

5 question do you want to continue to use the 3-167 kVA

6 transformers in anticipation of growing your load or

7 would you want ComEd --

8 MR. O'FARRELL: I have to have an answer to the

9 question.

10 THE WITNESS: Or would you want ComEd to

11 install a smaller transformer that would match your

12 load today and then there would be no rentals?

13 MR. O'FARRELL: Wouldn't it be feasible for

14 Commonwealth Edison to come in and do it at their

15 cost?

16 THE WITNESS: No. If you want the transformer

17 to be replaced, there would be a charge to replace

18 the transformer, but then you also would incur the

19 cost with an electrician or whoever to combine your

20 two services internally.

21 MR. O'FARRELL: At the point that I had this

22 service installed I was not told that. I don't know

1 if that was the practice at the time in 1993 or not,
2 but that was not even brought into consideration.

3 The other thing I was told --

4 JUDGE RILEY: This is again -- I understand.
5 Mr. O'Farrell, this is argument again. You're going
6 off on a narrative. You can only -- this is a
7 question/answer session.

8 MR. O'FARRELL: The original audit it was
9 determined that it was uncovered and I don't
10 understand that because every bill lists two meters
11 and two points of service.

12 JUDGE RILEY: Did you have anything further for
13 Mr. Mueller?

14 MR. O'FARRELL: No. The only thing is that the
15 bill here takes into account for the transformer.

16 JUDGE RILEY: Mr. Goldstein, do I have a copy
17 or were you going to offer a copy of the tariff that
18 was in effect in 1993?

19 THE WITNESS: The tariff from 1993 we do not
20 have that here.

21 JUDGE RILEY: Do you have a date for that
22 tariff that I could look it up? Is it still on file?

1 MR. GOLDSTEIN: I doubt it.

2 THE WITNESS: We may have historical records of
3 it, but I can't tell you exactly what the effective
4 date back in 1993 was.

5 JUDGE RILEY: It wasn't necessarily filed in
6 1993, it might have been filed prior to that.

7 THE WITNESS: Yes.

8 MR. GOLDSTEIN: I think that we could ask
9 Mr. Mueller which tariff is in effect which would be
10 effective to back-bill the customer for the two years
11 that we're back billing.

12 JUDGE RILEY: Mr. Mueller, can you answer that?

13 THE WITNESS: Well, in addition to the tariff
14 that's filed with the Commission the utilities in
15 Illinois must follow the Commission's rule as stated
16 in 83 Illinois Administrative Code. And in Part 280,
17 Section 100 it does give the utility the ability to
18 back-bill a nonresidential customer for up to two
19 years after the service has been provided.

20 MR. GOLDSTEIN: That's Exhibit 2, ComEd
21 Exhibit 2?

22 THE WITNESS: Yes.

1 MR. GOLDSTEIN: And what was the applicable
2 tariff if you were to go back the two years and be
3 allowed to back-bill?

4 THE WITNESS: Rider NS.

5 MR. GOLDSTEIN: And that is also part of what
6 we provided to the judge today and as part of the
7 record here, which is ComEd Exhibit 1.

8 JUDGE RILEY: So it's my understanding then
9 that ComEd Exhibit 1 supercedes the 1993 tariff for
10 the purposes of back-billing for the two years?

11 MR. GOLDSTEIN: For purposes of back-billing
12 for the two years, yes. I would note for the record,
13 Judge, that the effective date of the Rider NS tariff
14 that we've been discussing this morning is January
15 15, 2009. And as Mr. Mastache has so testified, this
16 billing goes back from March
17 of 2009 forward to March of 2011.

18 JUDGE RILEY: Off the record.

19 (Whereupon, a discussion was had
20 off the record.)

21 JUDGE RILEY: All right. Back on the record.

22 MR. GOLDSTEIN: Judge, I have been advised that

1 the tariff that was in effect back in 1993 was
2 something called Rider 6, it's now Rider NS. My
3 understanding is -- and I haven't been able to verify
4 it because I haven't seen the document -- but the
5 Rider NS tariff today is exactly the same as the
6 tariff that existed back in 1993, it's just changed
7 in the name as opposed to anything else. We will
8 attempt to find the rider that was in effect in 1993
9 if you wish.

10 JUDGE RILEY: Mr. O'Farrell, are you willing to
11 accept that representation, that the rider that was
12 in effect in 1993 is precisely the same in wording as
13 the ComEd Exhibit 1.

14 MR. O'FARRELL: I guess I will.

15 JUDGE RILEY: Mr. Goldstein, you're saying the
16 only thing that's changed on it was the designation
17 itself.

18 MR. GOLDSTEIN: That's correct. I think that
19 as I understand Mr. O'Farrell's problem it seems that
20 he's confused as to -- he thinks that the
21 back-billing is based upon his change in load and
22 it's not. The fact, and I think you pointed out in

1 your examination of our witnesses, that from 1993
2 forward to earlier this year ComEd failed to bill for
3 these rental services, these NS -- what are now
4 non-standard facilities charges. What happened was,
5 as you described, there was a back room audit. It
6 was determined that there were NS charges applicable
7 to the facilities that Mr. O'Farrell has in place and
8 had in place for all these years. ComEd did fail to
9 bill for those 280.100 allows for ComEd to go back
10 two years from the time it discovers this problem and
11 bill the customer for this. And I think that pretty
12 much concludes where we're at in this case.

13 JUDGE RILEY: Was that your closing argument?

14 MR. GOLDSTEIN: I'm just saying that
15 Mr. O'Farrell has been doing the same kind of thing
16 and I figured I would take this opportunity for
17 myself.

18 JUDGE RILEY: All right. Mr. O'Farrell that
19 pretty much concludes the matter.

20 MR. O'FARRELL: To answer the comment on him
21 now is it true that I could say that Commonwealth
22 Edison was looking more for other ways to increase

1 their income besides charging electrical rates as
2 of -- after the recession of '08?

3 JUDGE RILEY: I got the impression that you
4 were getting at that over the course of this hearing.
5 I don't think that there was any basis in the answers
6 that I heard to believe that they're simply trying to
7 up their profits simply because of the economic
8 downturn that the county has been through. I don't
9 think there is any basis for that at all.

10 MR. O'FARRELL: You don't?

11 JUDGE RILEY: No. Not, in the testimony I've
12 heard.

13 MR. O'FARRELL: It's just convenient, the
14 timing?

15 JUDGE RILEY: No. I mean you can argue that if
16 you want.

17 MR. O'FARRELL: The timing speaks for itself,
18 the economy spoke for itself.

19 JUDGE RILEY: The next order of business, this
20 Commonwealth Edison bill with an issue date of
21 March 28, 2011 I want to mark this as your exhibit,
22 Complainant's Exhibit 1.

1 MR. O'FARRELL: Yes.

2 JUDGE RILEY: And Mr. Goldstein, do you have
3 any objection -- I take it Mr. O'Farrell you're
4 moving for the admission of this exhibit into
5 evidence?

6 MR. O'FARRELL: Yes.

7 JUDGE RILEY: Okay. Mr. Goldstein, do you have
8 any objection.

9 MR. GOLDSTEIN: I have no objection.

10 (Whereupon, Complainant's
11 Exhibit No. 1 was marked and
12 admitted into evidence.)

13 JUDGE RILEY: And that completes your case in
14 chief Mr. O'Farrell?

15 MR. O'FARRELL: Can we enter their documents
16 that they mailed us concerning -- the original
17 without my name on it as evidence, too, saying that
18 there was something out there and we never received
19 it.

20 MR. GOLDSTEIN: This was given to him yesterday
21 by Commonwealth Edison.

22 JUDGE RILEY: This is ComEd Exhibit 4. This

1 going to be moved for admission.

2 MR. O'FARRELL: This is something that I never
3 received.

4 JUDGE RILEY: We have testimony as to that.

5 Mr. Goldstein.

6 MR. GOLDSTEIN: I've already moved for the
7 admission of exhibits 1 through 4 into evidence.

8 JUDGE RILEY: Mr. O'Farrell, do you have any
9 objection to all or any part of these exhibits? Have
10 you had a chance to look at.

11 MR. O'FARRELL: No.

12 JUDGE RILEY: Then Commonwealth Edison Exhibits
13 1 through 4 are admitted into evidence in their
14 entirety.

15 (Whereupon, Respondent's Exhibit
16 Nos. 1-4 were admitted into
17 evidence.)

18 JUDGE RILEY: Now, the last order of business
19 and I've already gotten quite a bit of this. Do the
20 parties want to present closing arguments or do they
21 want to file closing briefs?

22 MR. GOLDSTEIN: I've had pretty much a closing

1 argument, Judge, but I would respond if Mr. O'Farrell
2 has anything further he wishes to say.

3 JUDGE RILEY: Mr. O'Farrell, you have a
4 choice --

5 MR. O'FARRELL: I've been in business
6 since '93. We set this up then for me to be in
7 business, all right. With the discussions between my
8 contractor and Commonwealth Edison it was determined
9 that that bank of transformers would serve me well.
10 Now, as I grew there was never a complaint, as the
11 source of their income grew they never complained.
12 But with the downturn in the economy in '08, my
13 actual downturn probably happened in 2002, but it got
14 bad, I laid people off in '08 to help me survive and
15 it's slowly but surely coming back, I hope our
16 government does the right thing so that it does
17 continue to come back. But is Commonwealth Edison
18 given the right to back-charge for services they
19 provided 20 years ago and come back and create a
20 situation that brings them more income on a trying
21 business now that is, you know, forcing itself -- you
22 know trying to come back and make a living and put

1 more people to work and working against the flow of
2 water, they're trying to push me back and I don't
3 understand.

4 JUDGE RILEY: Does that conclude your remarks?

5 MR. O'FARRELL: Yes.

6 JUDGE RILEY: Okay. The last order of business
7 is just to advise the parties of the procedure from
8 this point on. I'm going to wait until I get a copy
9 of the transcript which is roughly two weeks from
10 today and I'm not going to write a word until I've
11 thoroughly digested what's in the transcript.
12 There's been a lot of technical information and it's
13 going to take a lot of study. Once I do have a
14 command of the testimony, I'm going to prepare what
15 is called a proposed order and I will issue the
16 proposed order through the Clerk's Office to each of
17 the parties and at that point whoever -- let me start
18 over.

19 When the parties receive that proposed
20 order they are entitled to file exceptions and
21 contest anything in the order that they think that I
22 have misinterpreted, misunderstood or any rulings or

1 any conclusions that I have drawn. And once I
2 receive those exceptions back there will be a
3 deadline for the submission of exceptions which you
4 would file through the Clerk's Office again. And
5 once I receive the exceptions, then I will prepare a
6 final order for the Commission and the Commission
7 will rule on it in a bench session that I'm certain
8 will be well into after the first of year at this
9 point.

10 Any further questions?

11 MR. O'FARRELL: In the meantime if they
12 approach me again with a settlement of some type can
13 we agree to something?

14 JUDGE RILEY: You can settle this matter any
15 time up until the Commission issues that final order.

16 MR. O'FARRELL: Okay. That's what I needed to
17 hear.

18 JUDGE RILEY: If there is nothing further I'll
19 direct the Court Reporter the mark this matter heard
20 and taken. Thank you.

21 (Heard and Taken.)

22